S.B.Civil Misc.Appeal No.152/93
Mangi Lal & ors. vs. L.Rs. of Hussain & anr.

Date of Order: 14.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. C.S.Mandora for the appellants.

Heard learned counsel for the appellants.

The appeal is against the order of remand dated 8.4.1993 passed by the court of Addl. District Judge, Sojat, District Pali in Civil Appeal (Decree) No.6/1992(No.47/85).

Brief facts of the case are that the plaintiffs' suit for recovery of Rs.6160/- was decreed by the trial court by judgment and decree dated 9.7.1985. Said order was challenged by the defendants by preferring regular first appeal. The appeal was allowed by the first appellate court and the judgment and decree of the trial court dated 9.7.1985 has been set aside on the ground that the trial court did not frame the issue on the basis of the plea taken by the defendant. However, the appellate court, while remanding the matter, did not frame any additional issue but directed the trial court to frame the issue, in the light of the pleas taken by the defendants in para nos. 1 and 2 of the additional pleas. Being aggrieved against the said order of the remand dated 8.4.1993, the appellants have preferred this appeal.

It appears from the facts of the case that the plaintiffs filed the

suit for recovery of Rs.6160/-. The defendants after denying the plaint allegation, took plea that the plaintiffs are money lenders and their suit is barred under Section 47 of the Money Lenders Act. The defendants also took plea that the defendants are agriculturists and, therefore, the suit of the plaintiffs is not maintainable and the remedy lies under the provisions of the Rajasthan Relief of Agricultural Indebtedness Act. The First appellate Court in brief judgment merely observed that though the trial court framed issue with respect to the non-maintainability of the suit under Section 47 of the Money Lenders Act but did not frame issue on the plea which was taken by the defendants in the additional pleas. It appears from the record that the first appellate court did not look into the record to find out whether the parties led evidence on the pleas which they took in their pleadings and the written statement. The defendant himself appeared and produced witnesses in support of his plea that he is agriculturist. He produced documents and he stated that he is holding the agricultural land. The defendant was cross-examined by the plaintiffs on their being agriculturists. In the cross-examination, the defendant stated that since last 3-4 years, he is not doing the agriculture. He also admitted that he is earning rent from five shops and also admitted that he is not only not doing the agriculture but his grand-son is doing the agriculture. DW-2 Bagdi Ram @ Badarudeen also stated in his examination-in-chief that he and his family members' main

occupation is agriculture and he was cross-examined on this point. In view of the above, both the parties were fully aware about the issue involved and, therefore, the first appellate court failed to look into the record, therefore, committed error of law in remanding the matter, in a case where the evidence was already produced by the defendants on the pleas taken by them.

In view of the above the appeal is allowed and the order of remand dated 8.4.1993 is set aside. The appellate court is directed to decide the appeal expeditiously as the appeal is very old one of the year 1985 and 20 years have already passed. The record of the court below be sent forthwith.

(**PRAKASH TATIA),J.**

mlt.